

Appeal from decision of the Idaho State Office Bureau of Land Management, requiring right-of-way applicant to furnish copies of FCC permits. I-13330.

Affirmed as modified and remanded.

1. Communication Sites -- Rights-of-Way: Generally

Where, in connection with a communication site right-of-way, BLM requests an applicant to submit copies of FCC licenses and such applicant indicates a willingness to comply, the case is properly remanded for further processing.

APPEARANCES: Donald R. Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Donald R. Clark appeals from a decision dated August 8, 1979, by the Idaho State Office, Bureau of Land Management (BLM), requiring him to furnish copies of FCC permits for all users of his equipment at communication site I-13330.

BLM's request was based on 43 CFR 2801.1-5, paragraph (a) of which requires a right-of-way applicant "[t]o comply with state and Federal laws applicable to the project for which the right-of-way is approved and for the lands which are included in the right-of-way, and lawful existing regulations thereunder."

Paragraph (h) requires further compliance

with such other specified conditions, within the scope of the applicable statute and lawful regulations thereunder, with respect to the occupancy and use of the lands as may be found by the agency having supervision of the lands to be necessary as a condition to the approval of the right-of-way in order to render its use compatible with the public interest.

The decision appealed from states that under Federal laws applicable to the grant "the applicant and each user of the site must produce a copy of the FCC license or permit for transmitting of radio signals." It explains that the purpose of the requirement is to determine possible frequency problems, electromagnetic incompatibility, and to protect the licensed communications operator "from the myriad number of bootleg stations that would be operating illegally * * * if the Bureau were not managing them with this requirement."

In his statement of reasons, appellant says that BLM recently inspected his site and that "each repeater had a valid license attached to it." Appellant suggests that what BLM is requiring is within the scope of the FCC's responsibility; however, he emphatically states his intentions to furnish to BLM a copy of the FCC permits for each transmitter on his site.

Paragraph 8 of the decision appealed from allowed appellant a period of 30 days to submit copies of the requested FCC licenses. In direct response to this allowance, appellant avers in his statement of reasons, "I will do it."

[1] Since appellant has shown his willingness to file the licenses, we believe it is appropriate to remand the case, affording appellant an opportunity to make his filings within a period to be specified by BLM, and allowing BLM to rule on the sufficiency thereof in the first instance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and the case is remanded for further processing in accordance with the views expressed herein.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

